

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARONTA TYRONE LEWIS,
Plaintiff,
v.
CONNIE GIPSON, ET. AL.,
Defendants.

Case No. 1:20cv574-JLT-HBK
ORDER DENYING PLAINTIFF'S MOTIONS
TO STAY OR EXTEND TIME FOR
DISCOVERY; AND MOTION FOR
DEFENDANTS TO APPEAR FOR
DEPOSITIONS
(Doc. Nos. 139, 140, 42)
ORDER GRANTING MOTION TO RULE
(Doc. No. 141)

Plaintiff, a prisoner, is proceeding on his *pro se* civil rights complaint as screened and after Defendants' motion to dismiss. (Doc. Nos. 1, 19, 117, 120). On November 23, 2021, the Court issued a Case Management and Scheduling Order. (Doc. No. 136, CMSO). Pending before the Court is Plaintiff's motion to stay all proceedings for health and safety reasons (Doc. No. 139), motion to stay and/or extend discovery schedule (Doc. No. 140), motion for ruling on stay or continuance (Doc. No. 141), and motion for Defendants to appear for depositions (Doc. No. 142).

Both of Plaintiff's motions to stay are related, to the extent the factual allegations are similar. Plaintiff first states he seeks to stay the case due to his health. (Doc. No. 139 at 1). Specifically, Plaintiff states he contracted a "microscopic parasite" that has invaded his ears and

1 several other parts of his body for which he is currently taking medication. (*Id.* at 2). Plaintiff
2 states he wishes to stay the case so that he does not expose the deputy attorney general's office
3 and law clerks to this parasite. (*Id.* at 3). Plaintiff also claims he is scheduled to be released soon
4 and will attend to his medical issues after he is released and continue prosecuting his case at that
5 point. (*Id.* at 4).

6 Based on the same parasite, Plaintiff states he seeks to stay or extend discovery in this
7 case. (Doc. No. 140 at 1-4). Plaintiff further states he is having all of his legal paperwork
8 fumigated. (*Id.* at 2). Plaintiff does not specify to what extent he has engaged in discovery to
9 date and the length of the extension he requires. (*See generally Id.*). According to the CMSO, the
10 discovery deadline in this matter does not expire until August 23, 2022. (Doc. No. 136).
11 Considering Plaintiff has another five months to conduct discovery, any request to extend the
12 discovery deadline at this stage is premature.

13 Turning to Plaintiff's motion for Defendants to appear for deposition, Plaintiff requests
14 Defendants to appear for a video conference deposition. (Doc. No. 142 at 1). Plaintiff states he
15 proposes to depose: California Governor Newsom, Director of the CDCR Connie Gipson,
16 Warden Stuart Sherman, Associate Warden S. Smith, various captains and sergeants, the medical
17 triage unit, and inmate witnesses who boarded with ADA transport van with him. (*Id.* at 2-3).
18 Plaintiff asks defense counsel to consult with his clients and advise about availability of
19 defendants for depositions. (*Id.* at 3).

20 At the outset, California Governor Newsom and Director of the CDCR Connie Gipson
21 were dismissed from this action. (*See Doc. Nos. 117, 120*). Further, to the extent that Plaintiff
22 seeks discovery from Defendants, including any depositions, he is to seek such discovery from
23 Defendants' counsel directly, not through a motion with the Court. Further, Plaintiff is advised
24 that *in forma pauperis* relief is governed and limited by 28 U.S.C § 1915. While inmates have a
25 constitutional right of access to the courts, an inmate's constitutional right of access to the courts
26 does not impose "affirmative obligations on the States to finance and support prisoner litigation."
27 *Lewis v. Casey*, 518 U.S. 343, 384 (1996). *Informa pauperis* status does not entitle a plaintiff to
28 a waiver of costs associated with depositions and other costs required to litigate a claim. *Love v.*

1 *Brewer*, 2021 WL 1022702, *1 (E.D. Cal. Mar. 17, 2021); *see also Tedder v. Odel*, F.2d 210,
2 211-212 (9th Cir. 1989) (holding that 28 U.S.C § 1915 does not authorize a waiver of witness
3 fees that are tendered with subpoenas). The Federal Rules of Civil Procedure require the party
4 that is taking the deposition to bear the costs of the recording. Fed. R. Civ. P. 30(b)(3).

5 In *Tedder v. Odel*, the appellant, a *pro se* and *in forma pauperis* plaintiff, mailed a
6 subpoena that did not have the necessary witness and mileage fees attached to the appellee. 890
7 F.2d at 211. Appellee received advice that service of the subpoena was improper and therefore
8 did not appear at trial. *Id.* The district court granted summary judgment in favor of the appellees
9 and held that the appellee's failure to appear was not a basis for any liability. *Id.* at 210-211.
10 Appellant argued that the subpoena was not deficient because he was an *in forma pauperis*
11 plaintiff and exempted from the fee requirements. *Id.* at 211. The Ninth Circuit rejected
12 appellant's argument, ruling that 28 U.S.C § 1915 does not authorize a waiver of witness fees that
13 are tendered with subpoenas. *Id.* at 211-212; *see also Dixon v. Yist*, 990 F.2d 478, 480 (9th Cir.
14 1993).

15 Plaintiff also is not entitled to a joint deposition. If Plaintiff desires to depose the
16 Defendants, then Plaintiff must pay the costs for recording the Defendants' depositions as
17 required by Rule 30(b)(3) of the Federal Rules of Civil Procedure. As ruled by the United States
18 Supreme Court in *Lewis v. Casey*, the Ninth Circuit Court of Appeals in *Tedder*, and this Court in
19 *Love*, Plaintiff's *in forma pauperis* status does not authorize the waiver of any fees associated
20 with recording Defendants' depositions. Plaintiff has other means available, such as filing
21 interrogatories and requests for admission, to obtain the information he would seek by deposing
22 the Defendants.

23 Accordingly, it is **ORDERED**:

24 1. Plaintiff's motions to stay the case or extend time for discovery (Doc. Nos. 139, 140)
25 are DENIED. Plaintiff may renew his motion for extension to the discovery deadline in the future
26 should the current August 23, 2022, discovery deadline not be sufficient.

27 2. Plaintiff's motion for a ruling (Doc. No. 141) on the motions to stay are GRANTED to
28 the extent the Court herein DENIED his motions to stay and for an extension to the discovery

1 deadline.

2 3. Plaintiff's motion requesting the Court to require Defendants to appear for depositions
3 (Doc. No. 142) is DENIED.

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5 Dated: March 22, 2022



6 HELENA M. BARCH-KUCHTA
7 UNITED STATES MAGISTRATE JUDGE
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